

**REMARKS**

Claims 7, 8, 9, 10/7, 10/8, 10/9, 12 and 15 stand rejected under 35 USC 102(e) on Rosenqvist (U.S. Patent no. 6,590,612). Applicant respectfully traverses this rejection.

Initially, applicant respectfully submits that by citing “column 4, line 60 through column 6, line 43,” as disclosing multiple features of claim 7, the Examiner has failed to particularly identify where in the reference the specific features are allegedly disclosed. Accordingly, the Examiner has not afforded applicant a fair opportunity to consider or respond to the rejection of the claims. It is not applicant’s duty to determine which part of the reference the Examiner is relying on as disclosing the recited features, and the Examiner’s overbroad citation forces applicant to do just that. Consequently, should the Examiner not find the below arguments persuasive, applicant respectfully request a further non-final action which particularly identifies the disclosure being relied on by the Examiner.

Claim 7 recites “while changing the focal length of said optical system, obtain multiple image data selected from among image data of brightness data and a plurality of color data, and calculate a focal length from the obtained multiple image data using a peak value of contrast evaluated values of said multiple image data and a peak position which corresponds to a position of the peak value.” Rosenqvist does not disclose or suggest such features.

Initially, applicant submits that the Examiner has conceded that Rosenqvist does not disclose or suggest multiple image data including brightness data. (See, page 7 of the current Action.) Furthermore, Rosenqvist does not disclose or suggest multiple image data including color data as asserted by the Examiner.

While Rosenqvist may disclose “grabbing” and storing images related to each of multiple colors, Rosenqvist does not disclose obtaining color data as recited in claim 7. As recited in claim 7, the multiple image data includes either brightness data or color data which is then used to calculate a focal length. Rosenqvist does not disclose such a feature. Instead, Rosenqvist merely

discloses that an image is captured to account for image divergence due to wavelength differences at high magnification. Rosenqvist does not disclose that color data is obtained or used; only that various images are captured because of their color. Furthermore, Rosenqvist only discloses that an image having a "highest value of the focus function" is captured during a single scan as a result of the scan. Rosenqvist does not disclose calculating a focal length, or even performing a calculation of any sort related to focal length. Rosenqvist, accordingly, does not disclose that a focal length is ever calculated based on brightness or color data as recited in claim 7, which is allowable for at least this reason.

Additionally, Rosenqvist makes no disclosure or suggestion related to calculating a focal length using a peak value of contrast evaluated values or a peak position which corresponds to a position of the peak value as recited in claim 7. The Examiner has relied on col. 5, lines 42-50, and col. 6, lines 31-38, as disclosing the calculation of a focal length as recited. Applicant submits that Rosenqvist makes no such disclosure.

Rosenqvist discloses a microscope system in which multiple images are taken at different focal lengths to account for wavelength variations of different colors. This allows the device of Rosenqvist to use a non color compensated lens, thereby lowering the cost of the device. (Col. 4, lines 51-67.) The device of Rosenqvist "grabs" a separate image for each desired color (for example, RGB) and then stores the images separately, thereby allowing observers to view separate images for each color spectrum and to have all of the images in focus. (Col. 4, lines 64-67.) Rosenqvist discloses that auto-focusing must be performed between each image grab; this auto-focusing is done using a "single one-directional scan of the vertical position of the objective for storing each color component image at the optimal focus." (Col. 5, lines 12-20.)

Rosenqvist does not disclose or suggest that the auto-focusing is in any way dependent on or related to a peak value of contrast or a peak position as recited in claim 7. Rosenqvist certainly does not disclose using these peaks (which are not disclosed) to calculate a focal length.

Accordingly, Rosenqvist does not disclose or suggest all of the features of claim 7 which is therefore allowable.

Claims 8, 9 and 10 depend from allowable claim 7 and are allowable due at least to their respective dependencies. Applicant has canceled claim 12.

Claim 15 recites a device to “calculate a focal length for each respective color data mentioned above by using the peak value of contrast evaluated values calculated from the obtained multiple image data.” As noted above, Rosenqvist does not disclose or suggest using the peak value of contrast evaluated values calculated from the obtained multiple image data or calculating a focal length. Accordingly, claim 15 is allowable for at least the same reasons as claim 7.

Claims 1, 2, 4, 5/1, 5/2, 5/4 and 13 stand rejected under 35 USC 103(a) on Rosenqvist in view of Watanabe (U.S. Patent Publication No. 2003/0063212). Applicant respectfully traverses this rejection.

Claim 1 recites “obtaining, while changing the focal length of an optical system, multiple image data comprising brightness data and a plurality of color data; and calculating a focal length from the obtained multiple image data using a peak value of contrast evaluated values of said multiple image data and a peak position corresponding to a position of the peak value.”

As noted above, Rosenqvist does not disclose or suggest using brightness data and color data to calculate a focal length. While the Examiner has cited Watanabe as disclosing brightness data, he has not cited Watanabe as disclosing using brightness and color data to calculate a focal length. Accordingly, the combination of Rosenqvist and Watanabe fails to disclose or suggest all of the features of claim 1, which is therefore allowable for at least the same reasons as claim 7.

Accordingly, claims 2, 4, 5/1, 5/2, 5/4 and 13, which depend on allowable claims, are allowable due at least to their respective dependencies.

Claims 6/1, 6/2, 6/4 and 14/13 stand rejected under 35 USC 103(a) on Rosenqvist in view of Watanabe and Omata (U.S. Patent No. 6,067,114). Applicant respectfully traverses this rejection.

The Examiner has cited Omata as disclosing a plurality of image detection areas. Omata fails to overcome the deficiencies of Rosenqvist and Watanabe detailed above. Accordingly, claims 6/1, 6/2, 6/4 and 14/13, which depend on allowable claims, are allowable due at least to their respective dependencies.

Claims 11/7, 11/8, 11/9 and 14/12 stand rejected under 35 USC 103(a) on Rosenqvist in view of Omata. Applicant respectfully traverses this rejection.

Again, The Examiner has cited Omata as disclosing a plurality of image detection areas. Omata fails to overcome the deficiencies of Rosenqvist detailed above. Accordingly, claims 11/7, 11/8, 11/9 and 14/12, which depend on allowable claims, are allowable due at least to their respective dependencies.


Claim 16 stands rejected under 35 USC 103(a) on Rosenqvist in view of Yoshida (U.S. Patent No. 5,189,524). Applicant respectfully traverses this rejection.

The Examiner has cited Yoshida as disclosing a warning device for indicating that an image capturing process is underway. Yoshida fails to overcome the deficiencies of Rosenqvist detailed above. Accordingly, claim 16, which depends on allowable claim 15, is allowable due at least to its dependency.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief, including extensions of time, and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. **524642002200**.

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